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Supreme Court, U.S.
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No. 04-902

In The
Supreme Court Of The United States

JERRY MURPHY,
Petitioner

vs.

METROPOLITAN TRANSIT AUTHORITY,
Respondent

On Petition for a Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

Jerry Murphy, *PRO SE*
4306 Gallagher
Houston, TX 77045
(713) 433-9535

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI

This Supplemental Brief is submitted, according to Rule 15 (8), to address a new issue raised by the Respondent. In the Respondent's Reply brief he took the liberty to categorize the EEOC investigation into this case as an 'exhaustive investigation of the Petitioner's allegations' (pg. 2). The Respondent states: "Specifically, approximately 7 months after Petitioner filed a Charge of Discrimination with the EEOC on or about December 9, 2002, alleging race and age discrimination (R. 411), on July 10, 2003, EEOC Investigator Patricia Zuniga sent Petitioner a Pre-Determination letter, stating that there was no evidence of race or age discrimination. (R. 410, 468-470)." (pg. 2, Brief in Opposition)

These statements seem to imply that the time frame referenced is for a period of exhaustive investigation into the issues of this case. Actually, the time frame of this EEOC investigation by Ms. Zuniga took one day in spite of the fact that she was in possession of the case for nearly 7 months. According to her statement made to Mr. Murphy when he called on July 3, 2003 to inquire about the case, Ms. Zuniga had not had an opportunity to review the case because she had been busy on higher priority cases. Mr. Murphy met with Ms. Zuniga on July 9, 2003. On July 10, 2003 she prepared her predetermination letter.(R. 410) Although METRO had provided its response to the EEOC inquiry on ***January 14, 2003***, Mr. Murphy had not been informed of the response until July 9, 2003. This was the basis of Mr. Murphy's letter to the Acting-Director of EEOC, Mr. Jim Sacher, on July 13, 2003.(R. 408-409) Mr. Murphy's concern was that factual issues had not been resolved prior to a predetermination of establishing whether

or not age and race discrimination had occurred. Mr. Jim Sacher responded with: "It is clear that you believe that you have been mistreated and that your employer has not been candid with us. It does not follow, though, even if it is true, that the reason for the adverse action against you is motivated by discrimination against you because of your race and/or age."(R. 384) In addition, he reconfirmed that Mr. Murphy, an African American, was the same race as his immediate supervisor (Mr. Pitts) and other supervisory persons were of minority groups. These points were, however, provided in the EEOC intake interview in December 2002, and were not points discovered from a 7 month investigation.

The EEOC failed to establish a true factual reason for the termination. They accepted METRO's asserted reasons for termination as legitimate when EEOC restated, in Ms. Zuniga's letter on July 10, 2002, that the reason for termination was: "*...because of your work performance and was the result of your failure to notify your supervisor that a vanpool was inactive.*" (R.410) Even though conflicting evidence was provided the EEOC they did not investigate the accuracy of METRO's assertions. In this same manner EEOC did not investigate the issues of van production credits which were the basis of Mr. Murphy's negative Performance Review on August 29, 2002. Mr. Murphy provided the EEOC his Rebuttal Letter of 9-22-02 where he challenged Mr. Pitts' van production assertions. (R. 393- 395) The EEOC did not investigate the legitimacy of the performance evaluation and it remains an issue of contention in the dispute of this case. This misapplication of fact issues has remained the central point of the Petitioner's complaint, which was never resolved in the EEOC investigation. The EEOC repeatedly asked Murphy to provide proof of age and race discrimination. Murphy repeatedly said the proof of age and race discrimination is illustrated by the fact nothing METRO says

about Murphy's performance or the reason for his termination is true, and evidence shows it is not true; therefore, the only thing that is left is age and race discrimination.

METRO responded to the EEOC initial inquiry on January 14, 2003 (titled: Response to Charge of Discrimination) with the following comments on its third page:

"*Beginning in mid-September, during the performance improvement period, the Charging Party became involved in a situation that cast doubt on his credibility and judgment. He was attempting to get a new vanpool to join the program. He presented paperwork for this vanpool to METRO's RideShare incentive coordinator for input into the RideShare system,* ***and later he represented to her that the vanpool was an active vanpool.*** *By these actions,* ***Murphy set into motion the vanpool program's mechanics that resulted in the distribution of reports*** *and processing of documentation for METRO's reimbursement from HGAC for financial incentives resulting from the creation of a new vanpool. In reality the vanpool never became active.* ***By allowing the inactive vanpool to continue in the system as active while he attempted to find a new driver,*** *the Charging Party's action resulted in the dissemination and publication of erroneous reports and information to both internal METRO management and to external partners, such as the HGAC.* ***Had Murphy simply notified his supervisor when the vanpool collapsed,*** *the RideShare managers would not have made representation,* ***based on his misrepresentations,*** *to METRO management and external partners that turned out to be false.*

The Charging Party's actions demonstrated to his superiors that ***he did not exercise good judgment with respect too the vanpool situation, nor did he communicate honestly with his supervisor and co-workers on the matter of the collapsed vanpool.*** *The latest incident was merely a* ***continuation of deficient performance that Murphy had demonstrated in the past.*** *As a result, David McMaster, Director of Customer Service and Sales, a white male, age 44, recommended termination of his employment with METRO."* (R.061-158 Initial Disclosures Items, {docket item # 15}) [The items, in bold print above, are to indicate those items the Petitioner have disagreement.]

The unresolved factual issues of this case made it possible for the District Court Judge to state: "It is irrelevant whether Metro's grounds for firing Murphy were erroneous as long as they were not transparent and false." The Judge was not able to see in this case that METRO was in fact transparent and false, because items indicated by the bold print above are either transparent or false. The EEOC could have resolved these items of dispute with a simple investigation into the issues.

The Respondent wants the Supreme Court to believe there was an 'exhaustive investigation' over a 7 month period into the issues of this case. That did not happen and the factual issues of this case are what make the case pretextual for age and race discrimination.

The Respondent has indicated this petition does not satisfy the Court's requirements for granting certiorari, because the asserted error consists of erroneous factual findings or the misapplication of properly stated rule of law.

The Petitioner asserts that the Court should act on this matter because the lower court has so for departed from the usual course of judicial proceedings as to call for an exercise of this Court's Supervisory power.

Respectively submitted,

Jerry Murphy, Pro Se Petitioner

March 1, 2005